

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
SOUTHERN DIVISION
NO. 7:14-cv-135

KYLE TORBIT, by and through his Guardian
Ad Litem, SANDRA TORBIT and SANDRA
TORBIT, Individually,

Plaintiffs,

v.

WAL-MART STORES, INC.,
WAL-MART STORES EAST, LP
and PACIFIC CYCLE, INC.,

Defendants.

NOTICE OF REMOVAL

TO: The United States District Court
For the Eastern District of North Carolina
Southern Division

Defendants, through their undersigned counsel, do hereby exercise their rights under the provisions of Title 28 U.S.C. § 1441 et seq., to remove this action from the General Court of Justice, Superior Court Division, New Hanover County, North Carolina, in which this cause is now pending as Case No. 14 CVS 1779. Defendants show unto the Court as follows:

1. This is an action of a civil nature in which the District Courts of the United States have been given original jurisdiction pursuant to Title 28 U.S.C. § 1332 in that complete diversity of citizenship existed at the time of the filing of this action and still exists as between the plaintiffs on the one hand and the defendants on the other, and the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.

2. Under the provisions of 28 U.S.C. § 1441 et seq., the right exists to remove this cause from the General Court of Justice, Superior Court Division, New Hanover County, North

Carolina, to the United States District Court for the Eastern District of North Carolina, which is the District where this action is pending.

3. In their Complaint, plaintiffs assert claims against the defendant sounding in negligence, breach of warranties and strict product liability, and seek to recover compensatory damages allegedly arising out of defendants' conduct.

4. Upon information and belief, plaintiffs are now, and were at the commencement of this action, citizens and residents of New Hanover County, North Carolina.

5. Defendant Wal-Mart Stores, Inc. is now, and was at the commencement of this litigation, a corporation organized under and by virtue of the laws of the state of Delaware, with its principal place of business in Bentonville, Arkansas.

6. Defendant Wal-Mart Stores East, LP is now, and was at the commencement of this litigation, a corporation organized under and by virtue of the laws of the state of Delaware, with its principal place of business in Bentonville, Arkansas.

7. Defendant Pacific Cycle, Inc. is now, and was at the commencement of this litigation, a corporation organized under and by virtue of the laws of the state of Delaware, with its principal place of business in Madison, Wisconsin.

8. The date on or before which defendants are required by the Rules of Civil Procedure of the State of North Carolina to answer or otherwise plead to plaintiffs' Complaint has not lapsed.

7. In accordance with the requirements of Title 28 U.S.C. § 1446, defendants are attaching hereto a copy of all process, pleadings, and orders served upon them in this action (attached as Exhibit A), and this Notice of Removal is being filed within thirty (30) days after the receipt by the defendants, through service or otherwise, of a copy of the initial pleading setting forth the claim for relief upon which the action is based.

8. Service of this Notice of Removal is being made upon on all parties as required by law.

WHEREFORE, defendants pray that this action be removed to this Court for further proceedings, as though this action had originally been instituted in this Court.

This the 26th day of June, 2014.

YOUNG, MOORE, AND HENDERSON P.A.

BY: /s/ Brian O. Beverly
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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that he served the foregoing document upon the attorney(s) shown below by depositing a copy of same in the United States mail, postage prepaid, addressed to said attorney(s).

This the 26th day of June, 2014.

YOUNG, MOORE, AND HENDERSON P.A.

BY: /s/ Brian O. Beverly

BRIAN O. BEVERLY

State Bar No. 21925

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Served on:

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